

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2017-207-E

In the Matter of:)	
)	
)	OPPOSITION TO SOUTH CAROLINA
Friends of the Earth and Sierra Club,)	ELECTRIC AND GAS COMPANY'S
Complainant/Petitioner v. South)	MOTION TO DISMISS
Carolina Electric & Gas Company,)	
Defendant/Respondent)	
)	

The South Carolina Coastal Conservation League, pursuant to S.C. Code Ann. Regs. 103-829 and Order No. 2017-70-H, submits this Brief in Opposition to South Carolina Electric & Gas's ("SCE&G" or the "Company") Motion to Dismiss the Complaint / Petition of the Friends of the Earth and Sierra Club. CCL submits this brief to emphasize that the Commission has the authority to initiate the proceeding Friends of the Earth and Sierra Club have requested and to urge the Commission to resist SCE&G's attempt to characterize the Petition for this new proceeding as "unripe" and "premature."

BACKGROUND

On June 22, 2017, Friends of the Earth and Sierra Club filed a complaint pursuant to South Carolina Code sections 58-27-960, 58-27-1930, 58-33-275(E) and Commission Rules 103-824 and 103-825 requesting a proceeding to: a) determine the prudence of SCE&G's acts or omissions in connection with building two new nuclear units at the V.C. Summer plant, b) determine the prudence of abandoning the units as well as the prudence of available least-cost efficiency and renewable energy alternatives, and c) require SCE&G to remedy, abate, and make reparations for unjust and unreasonable rates charged to ratepayers for the new units.

CCL filed a petition to intervene in this proceeding on July 3, 2017 to ensure that the prudent planning for, and acquisition of, clean energy resources is represented. On July 26, 2017, the Commission granted CCL's request to intervene.

On August 1, 2017 SCE&G announced its decision to cease construction of V.C. Summer nuclear units 2 and 3. That same day, SCE&G filed a petition for a "Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 & 3 and Related Matters," which the Commission assigned to Docket 2017-244-E. SCE&G also filed a notice of intent to file a request for revised rates under the Base Load Review Act ("BLRA"), which the Commission assigned to Docket 2017-246-E.

Following a motion by the Office of Regulatory Staff ("ORS") to dismiss SCE&G's petition and notice of intent, and following requests by several public officials for an opportunity to review the decisions leading to the abandonment of the new nuclear project, SCE&G on August 15, 2017 withdrew the petition and notice. SCE&G has reserved the right to refile petitions related to the abandonment of the project and to request revised rates.

POSITION AND ARGUMENT

CCL supports the Complaint that Friends of the Earth and Sierra Club filed pursuant to South Carolina Code sections 58-27-960, 58-27-1930, 58-33-275(E) and Commission Rules 103-824 and 103-825 requesting that the Commission initiate a formal adjudicatory proceeding. Several issues raised in that complaint are particularly relevant now that the V.C. Summer project has been abandoned, including: a) the prudence of acts and omissions and costs incurred by SCE&G in connection with the nuclear project considering the information available at the time; b) the prudence of the decision to abandon the project and the timing of that decision given

least-cost efficiency and renewable energy alternatives available to SCE&G; and c) whether any rate increases associated with the project are unjust and unreasonable and should be remedied given the alleged imprudence of SCE&G's acts and omissions. These issues are relevant as the Commission considers SCE&G's decision to abandon the units, whether to limit recovery of project abandonment costs, how to apportion risk and costs to SCE&G and its stockholders while protecting ratepayers, and any proposal from SCE&G to replace the project with capacity from alternative sources.

The Commission has broad general authority to regulate, to investigate, to set just and reasonable rates, and to establish standards, rules, and procedures that serve the public interest. The Commission's investigatory powers and general powers (*e.g.*, pursuant to South Carolina Code sections 58-27-140, 58-27-230, 58-27-850, 58-27-960, 58-27-1930, and South Carolina Code of Regulations section 103-810) give it latitude to fully examine the variety of important issues presented by the V.C. Summer situation. Two of these authorities—S.C. Code §§ 58-27-960 and 58-27-1930—are explicitly invoked in the Sierra Club and Friends of the Earth complaint, but the Commission is entitled to exercise jurisdiction on other bases.

CCL agrees with the Friends of the Earth and Sierra Club that SCE&G is not insulated from all scrutiny because it collected rates under “final and binding orders.”¹ This is especially true now that it is clear that the project was not proceeding in accordance with approved schedules, estimates, and projections.

SCE&G's characterization of the Friends of the Earth and Sierra Club's Petition for this new proceeding as “unripe” and “premature” is wrong for two reasons.

¹ Docket No. 2017-207-E, Friends of the Earth and Sierra Club's Response in Opposition to the Motion to Dismiss at 5, Jul. 21, 2017.

First, SCE&G's contention that any upcoming Base Load Review Act modification or abandonment docket will provide "a full opportunity to evaluate the prudence of the project"² to Complainants contradicts the company's own assertions elsewhere. Indeed, SCE&G has repeatedly argued that cost and construction schedule modification dockets are narrowly confined to determining whether changes to the previously approved schedule are prudent, *e.g.*, whether a change order to augment staff training is reasonable. For example, in Docket 2012-203-E, SCE&G asserted that the Sierra Club's argument that SCE&G should conduct a full prudence review of abandoning the nuclear project in favor of a less costly alternative energy resource plan should not be allowed because it was an attempt to reopen the base load review order.³ SCE&G argued that the Commission could review only the prudence of the specific cost and construction schedule changes proposed in the docket.⁴ The Commission agreed with this interpretation of the Base Load Review Act,⁵ as did the South Carolina Supreme Court.⁶ More recently, in Docket 2016-223-E, SCE&G moved to strike the testimony of a witness who described how an expansion of energy efficiency programs would reduce the energy bill increases caused by the \$852 million construction cost escalation at issue in that docket.⁷ SCE&G argued that discussion of the Company's energy efficiency programs was "completely unrelated to the [] docket."⁸

Even where SCE&G has compared the economics of completing the nuclear units versus abandoning them in favor of alternatives, SCE&G has always maintained that the analysis was

² Docket No. 2017-207-E, SCE&G's Reply to the Response in Opposition to the Motion to Dismiss at 1, Jul. 26, 2017.

³ Docket No. 2012-203-E, SCE&G's Brief in the Form of a Proposed Order Approving SCE&G's Request for Modification of Schedules at 13, Oct. 26, 2012.

⁴ *Id.* at 14.

⁵ Docket No. 2012-203-E, Order No. 2012-884 at 16-18, Nov. 15, 2012.

⁶ *S.C. Energy Users Comm. v. S.C. Elec. & Gas*, 410 S.C. 348, 360, 764 S.E.2d 913, 919 (2014).

⁷ Docket No. 2016-223-E, SCE&G's Motion to Strike Direct Testimony of Alice Napoleon, Sept. 15, 2016.

⁸ *Id.* at 2.

discretionary.⁹ In addition, SCE&G has limited the analysis to a comparison of completing the V.C. Summer units versus building new natural gas units and used a scenario with substantial prices on carbon emissions and a gas price trajectory that is 50% higher than the Company's base gas forecast.¹⁰ None of the analyses SCE&G has completed—in Dockets 2012-203-E, 2015-103-E, and 2016-223-E—included the least-cost energy efficiency or renewable energy alternatives Friends of the Earth and Sierra Club have requested that SCE&G consider.

In discovery requests in Docket 2017-207-E, CCL has sought information to ensure that SCE&G's review of solutions matches the gravity of the energy problem abandonment creates.¹¹ These requests have gone **completely unacknowledged**, even after the Commission issued Order 2017-691 “allowing discovery to proceed in advance of a hearing on the Motion to Dismiss[.]” SCE&G's failure to respond to CCL or the Sierra Club and Friends of the Earth raises serious questions about whether the Company is ignoring discovery requests in the hopes that the pending Petition gets dismissed and in the hopes that it can later successfully argue that the information responsive to these requests is outside the scope of any Base Load Review Act docket.

⁹ See Docket No. 2012-203-E, SCE&G's Response to Intervenor's Petitions for Rehearing or Reconsideration at 10, Dec. 6, 2012.

¹⁰ The 2016 update stated that: “SCE&G believes that the most reasonable scenario for planning purposes is the scenario that models a \$15 CO₂ cost and gas prices that are 50% higher than the current SCE&G gas forecast.” PSC Dkt. 2016-223-E, Lynch testimony Exhibit JML-2 at 8. The 2012 and 2015 updates stated that: “SCE&G believes that the most reasonable scenario for planning purposes is the scenario that models a \$30 CO₂ cost and gas prices that are 50% higher than the current SCE&G gas forecast.” PSC Dkt. 2012-203-E, Lynch testimony Exhibit JML-4 at 8; PSC Dkt. 2015-103-E, Lynch testimony Exhibit JML-1 at 7.

¹¹ CCL sent a general data request to SCE&G's legal counsel on July 14 seeking all information provided in response to requests served by other parties. On July 21 CCL sent a data request for more specific information, including total-spent details, sensitivities surrounding the remaining cost to bring the units in service, details about modeled alternatives and input assumptions (including assumptions about construction and operating costs, system and retail sales, peak load, fuel and CO₂ prices, efficiency and renewable energy costs and impacts, and unit retirements), as well as emissions and revenue requirements for the modeled alternatives. On November 9 CCL sent a data request seeking information about alternative plans for meeting system energy and capacity needs, changes to SCE&G's load forecasting methodology, and solar and natural gas capacity and prices. The Company has neither acknowledged nor responded to these requests. See S.C. Code Ann. Regs. 103-833.

SCE&G's contention that any upcoming Base Load Review Act modification or abandonment docket will provide "a full opportunity to evaluate the prudence of the project"¹² to Complainants is also undercut by the Company's recent proposal to (supposedly) "absorb the net nuclear construction costs" and set new rates to rollback some of the increases associated with V.C. Summer project.¹³ The proposal indicates that the Company may try to avoid or narrow any Base Load Review Act proceeding by agreeing not to seek recovery of certain costs rather than having those costs reviewed in the first place (which could lead to their disallowance).

The second reason why the Commission should not deny the Friends of the Earth and Sierra Club's Petition as "unripe" and "premature" is that it has been pending before the Commission for many months. As noted in Commission Order No. 2017-637, Rule 1 of the South Carolina Rules of Civil Procedure instructs that the determination of every action should be "just, speedy and inexpensive." Contrary to SCE&G's statement that "it will impose little if any burden on the Complainants to await the SCE&G's review and evaluation process and the filing of definitive claims for relief under the BLRA,"¹⁴ every day, week, and month matters. While the Petition awaits action, SCE&G's customers continue to pay the highest monthly bills of any medium-to-large investor-owned utility in the nation—in effect spending money on financing and SCE&G profits instead of actual energy solutions that would lower customer bills.¹⁵ Until the Commission and South Carolinians see a thorough, independent analysis, the extent to which SCE&G has wasted money and is unduly swaying other important energy decisions will be hidden. For example, in at least two dockets that CCL has participated in since

¹² Docket No. 2017-207-E, SCE&G's Reply to the Response in Opposition to the Motion to Dismiss at 1, Jul. 26, 2017.

¹³ SCANA, *SCE&G Proposes \$4.8 Billion Solution to Replace New Nuclear Project* (Nov. 16, 2017), [https://www.scana.com/docs/librariesprovider15/pdfs/press-releases/11162017-sceg-proposes-\\$4-8-billion-solution-to-replace-new-nuclear-project.pdf?sfvrsn=0](https://www.scana.com/docs/librariesprovider15/pdfs/press-releases/11162017-sceg-proposes-$4-8-billion-solution-to-replace-new-nuclear-project.pdf?sfvrsn=0).

¹⁴ Docket No. 2017-207-E, SCE&G's Motion to Dismiss at 3.

¹⁵ Ranking of IOUs serving more than 100,000 customers, based on EIA Form 861 data.

news broke that Westinghouse was on the brink of bankruptcy, SCE&G has asserted that both nuclear units were on schedule to come online in 2020.¹⁶ In addition, SCE&G has now twice proposed to build a 500MW or larger natural gas plant, with little explanation as to why such a plant was not considered sooner and why it would now be the best alternative despite the availability of cheaper and less risky alternatives.

The public and the Commission have waited too long already for an explanation about how the V.C. Summer project went awry and are paying daily for delayed resolution of this debacle. Beyond determining prudence and appropriate rates, a thorough, transparent analysis will help to identify how this disaster could have been averted and identify improvements in SCE&G's obviously flawed and skewed planning process going forward. Since 2011 CCL has urged SCE&G (and this Commission) to consider the potential for delays and cost overruns at V.C. Summer when developing its Integrated Resource Plan—the plan meant to identify the mix of resources that will reliably serve forecasted load at the lowest cost, considering environmental impacts. SCE&G failed to do so, and this Commission has failed to instruct it undertake such prudent planning. In the future, SCE&G must analyze multiple resource portfolios across alternative scenarios and utilize consistent outcome metrics to make resource investment and retirement decisions. The sooner that SCE&G is made to engage in least-cost, low-risk planning, the sooner that customers will stop needlessly pouring hard-earned dollars into ill-conceived and self-serving SCE&G projects. This disaster could have been avoided and the impacts to customers could still now be minimized. This matter is not unripe—it is long overdue.

¹⁶ See Docket No. 2017-9-E, SCE&G's 2017 Integrated Resource Plan, Feb. 28, 2017; Docket No. 2017-2-E, CCL and SACE's Proposed Order at 14 and 20, Apr. 14, 2017 (citing testimony of SCE&G witnesses who stated that changes at V.C. Summer could impact avoided cost rates but that those impacts were not analyzed).

CONCLUSION

For all of these reasons, CCL respectfully asks that the Commission deny SCE&G's Motion to Dismiss.

Respectfully submitted this 21st day of November, 2017.

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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2017-207-E

In the Matter of:)	
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Request of South Carolina Office of)	CERTIFICATE OF SERVICE
Regulatory Staff for Rate Relief to)	
SCE&G Rates Pursuant to S.C.)	
Code Ann. § 58-27-920)	
)	

I certify that the following persons have been served with one (1) copy of the foregoing Opposition to Motion to Dismiss by electronic mail at the addresses set forth below:

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This 21st day of November, 2017.

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